

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MICHELLE PICKENS, INDIVIDUALLY, §
AND AS REPRESENTATIVE OF §
THE ESTATE OF NEHEMIAH §
PICKENS, DECEASED, *et al.*, §
§
Plaintiffs, §
§
V. § CIVIL ACTION NO. H-05-2978
§
HARRIS COUNTY and §
WALLACE E. JONES, JR., §
§
Defendants. §

ORDER

The following motions are pending:

- plaintiffs' motion for leave to file a (corrected) first amended complaint (Docket Entry No. 34);
- Harris County, Deputy Wallace E. Jones, Jr., and Constable Victor Trevino's motions to dismiss and, alternatively, to require a Rule 7 reply from the plaintiffs or a more definite statement (Docket Entry Nos. 37, 38); and
- defendants' motion and supplemental motion for leave to file an amended answer and to abate discovery (Docket Entry Nos. 39, 40).

Plaintiffs' motion for leave to file an amended complaint is granted. The (Corrected) First Amended Complaint is deemed filed as of May 2, 2006. Defendants have until May 19, 2006 to file an amended answer.

Defendants have moved to dismiss on several grounds, including qualified immunity. In response, plaintiffs have clarified that Harris County and Deputy Wallace E. Jones, Jr. are the only named defendants and that Deputy Jones is sued only in his official capacity, not in his individual capacity. (*See* Docket Entry No. 43 at 9–10). Because Constable Trevino is not sued, the motion to dismiss the claims against him is moot. Defendants' motion to dismiss for failure to state a claim under section 1983 and the alternative motions for a Rule 7 reply or more definite statement are denied, based on the amended pleading and the absence of any qualified immunity issues. Based on the pleadings and responses, this case appears ready for summary judgment proceedings as to the municipal liability and sovereign and official immunity issues. The defendants have already produced extensive relevant information. (*See* Docket Entry No. 42 at 6). Defendants' motion to abate discovery is denied at this time, but discovery is limited to Harris County's municipal liability and related immunity defenses and must be completed by **June 30, 2006**. Defendants are ordered to file a motion for summary judgment based on municipal liability and sovereign and official immunity by **July 20, 2006**. Plaintiffs' response is due by **August 17, 2006**. This court will hear argument on the motion on Wednesday, **August 30, 2006, at 3:00 p.m.** in Courtroom 11-B.

SIGNED on May 3, 2006, at Houston, Texas.



Lee H. Rosenthal
United States District Judge